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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

NOE MORGA,

Defendant and Appellant.

H030889

(Monterey County
Super.Ct.No. SS052415)

Defendant Noe Morga pleaded nolo contendere to possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) and admitted suffering a prior strike conviction (Pen. Code, § 1170.12, subd. (c)(1)) and serving one prior prison term (Pen. Code, § 667.5, subd. (b)). He was sentenced to a 44-month term in the state prison. Defendant filed a timely notice of appeal.

FACTUAL AND PROCEDURAL HISTORY

Defendant's brother, Andy Aguiere, was on probation with search terms. On August 21, 2005, Salinas police officers conducted a probation search of his residence. Officer James Godwin discovered defendant in a bedroom of the apartment and observed him making a tossing motion with his left hand in the direction of an open closet. The officer, upon later checking the closet, found a baggie containing a green leafy substance which he believed was marijuana. The officer then searched defendant's person and found four bindles of white powder in his pants' pocket. The powder tested presumptively positive for cocaine.

Defendant was charged by amended complaint with possession of a controlled substance, cocaine (Health & Saf. Code, 11350, subd. (a)), and with enhancements pursuant to Penal Code sections 1170.12, subdivision (c)(1) and 667.5, subdivision (b). The complaint also alleged misdemeanor possession of 28.5 grams or less of marijuana (Health & Saf. Code, § 11357, subd. (b)).

Defendant brought a motion to suppress evidence pursuant to Penal Code section 1538.5 which was heard concurrently with the preliminary examination. The motion was denied and defendant was held to answer on the felony charge.

An information was filed alleging the same charges and enhancements as pleaded in the amended complaint. Defendant brought a motion to set aside the information pursuant to Penal Code section 995 and a “renewed [Penal Code section] 1538.5 motion.” The trial court denied the motions.

PLEA AND SENTENCING

Defendant pleaded no contest to the charge of possession of cocaine and admitted one prior strike and one prior prison term. At the sentencing hearing the trial court heard and denied a motion brought pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The misdemeanor charge was dismissed and defendant was committed to the state prison for a term of 44 months.

CONCLUSION

We appointed counsel to represent defendant in this court. Appointed counsel has filed an opening brief which states the case and the facts but raises no issues. We notified defendant of his right to submit written argument on his own behalf within 30 days. That time has elapsed and we have received no written argument from defendant. Pursuant to

People v. Wende (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there is no arguable issue on appeal.

The judgment is affirmed.

Duffy, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Mihara, J.